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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW CHRISTOPHER ACOSTA,

Defendant and Appellant.

E074112

(Super.Ct.No. FWV17002332)

OPINION

APPEAL from the Superior Court of San Bernardino County. Elia V. Pirozzi,  
Judge. Affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

## I

### INTRODUCTION

Pursuant to a plea agreement, defendant and appellant Andrew Christopher Acosta pleaded guilty to kidnapping (Pen. Code,<sup>1</sup> § 207). In return, the remaining charges and allegations were dismissed, imposition of an eight-year sentence was suspended, and defendant was placed on formal probation for five years on various terms and conditions of probation. About two years later, defendant violated the terms and conditions of his probation by contacting the victim and failing to report to his probation officer as directed. Following a formal probation revocation hearing, the trial court found true defendant violated the terms of his probation, terminated defendant's probation, and sentenced defendant to the suspended term of eight years in state prison with 541 days of credit for time served. Defendant appeals from the trial court's judgment finding he violated his probation. Based on our independent review of the record, we find no arguable issue and affirm the judgment.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Underlying Background*<sup>2</sup>

Defendant and the victim, Jane Doe, were involved in a relationship and had one child together. They had known each other for eight years and had tried to live together.

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> The underlying factual background is taken from the probation officer's report.

During this time, defendant had repeatedly abused Jane, and Jane had assisted defendant in posting bail on his recent domestic violence case where she was the victim. In May 2017, Jane broke up with defendant and was living on her own.

On June 5, 2017, Jane received a call from defendant who stated he had the money he owed her from the bail she had posted. Although she did not want to see defendant, Jane decided to see him because she needed the money and defendant was talking nicely to her on the phone. Jane therefore went to defendant's house with their child in the back seat of the car and parked in the driveway.

Defendant approached Jane's car, opened the front passenger door, and sat down inside the vehicle. Immediately thereafter, he began punching Jane in the face and ordered her to drive. Jane was in fear for her and her daughter's safety, so she began to drive. Defendant pulled out a screwdriver and started to stab the front passenger seat. He also stated, "If I can't have you, no one can." He pointed the screwdriver at Jane and threatened to kill her. He also continued to punch Jane in the face as she drove. Jane tried to escape by parking the car and trying to run away. However, defendant quickly tackled Jane to the ground. Defendant kicked Jane in the stomach and demanded her purse. He kicked her several more times and then started to kick her vehicle. He eventually left on foot.

On October 6, 2017, an information was filed, charging defendant with kidnapping (§ 207, subd. (a); count 1); assault with a deadly weapon (§ 245, subd. (a)(1); count 2); criminal threats (§ 422, subd. (a); count 3); injuring a spouse, cohabitant, girlfriend, or child's parent (§ 273.5, subd. (a); count 4); and vandalism over \$400 (§ 594, subd. (a); count 5). The information also alleged that defendant had been free of custody on bail when the offenses were committed (§ 12022.1). The information further alleged that defendant had suffered a prior prison term (§ 667.5, subd. (b)) and a prior serious or violent felony strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

On December 8, 2017, pursuant to a negotiated plea agreement, defendant pleaded guilty to kidnapping as alleged in count 1 of the information. In exchange, the remaining charges and allegations were dismissed, imposition of an eight-year sentence was suspended, and defendant was placed on formal probation for a period of five years on various terms and conditions of probation. Defendant was ordered to have no contact with the victim.

#### B. *Probation Revocation*

On June 13, 2019, a petition to revoke defendant's probation was filed. The petition alleged that defendant violated the terms and conditions of his probation by (1) failing to cooperate and follow all reasonable directives of his probation officer; (2) harassing and stalking the victim; (3) having negative contacts with the victim; and (4) violating a restraining order obtained by the victim.

On July 12, 2019, and August 9, 2019, defendant requested that his court-appointed attorney be replaced pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). The *Marsden* motions were denied.

A contested probation revocation hearing was held on November 1 and 8, 2019. The trial court took judicial notice of the protective restraining order, the terms and conditions of defendant's probation, the plea agreement, and the sentencing report prepared by the probation department. The court also heard testimony from the victim, defendant's probation officer, and defendant's brother.

The victim testified that she and defendant had been in a relationship off and on for 10 years and that they had one daughter. Jane was aware of the sound of defendant's voice over the phone. A family court had ordered defendant and Jane to participate in mediation regarding the custody of their child and defendant had previously been ordered to have no contact with Jane. Jane was eventually granted full custody of their child, in part because defendant failed to appear at the family court hearing.

On March 8, 2019, Jane received a text message from defendant's "5-0-7" phone number. The sender identified himself as "It's The Kid." In the past, defendant had often referred to himself as "The Kid." Jane also received several text messages on April 14, 2019, from a "5-5-0" phone number. Jane recognized this phone number as belonging to defendant's brother. The text messenger identified himself as "The Kid." Specifically, the text message stated, "It's the kid. I hate to bother, but it will make the rest of my year just to be able to speak to you just this once, please." Jane believed the

text message was from defendant. Jane explained that defendant's brother did not have her phone number and did not refer to himself as "The kid." Jane responded by texting, "'There is nothing to talk about anymore. Please stop calling.'" Jane then received five more text messages from the same "5-5-0" phone number.<sup>3</sup> Jane also received several voicemail messages from the same phone number. Jane recognized the voice on the voicemail message as belonging to defendant.<sup>4</sup>

Defendant's probation officer testified that on April 17, 2019, defendant was directed to report back to her on May 15, 2019, and that defendant did not appear as directed on May 15, 2019.

Defendant's brother testified he was the person that had sent Jane the text messages and that he and defendant shared a cellular phone. Defendant's brother further stated that he had also texted Jane from another phone.

The trial court found defendant had violated the terms and conditions of his probation by failing to report to his probation officer as directed, failing to follow the directives of his probation, and contacting the victim. The court found the victim's testimony "credible and persuasive," noting the victim had "described in detail the manner in which the defendant sometimes identified himself." The court thereafter revoked and terminated defendant's probation and sentenced defendant to the previously

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<sup>3</sup> The text messages were admitted into evidence as People's Exhibit 1.

<sup>4</sup> The voice messages were admitted into evidence as People's Exhibit 2 (a CD of the voice messages) and 2-A (transcript of the voice messages).{RT 51-52, 81; CT 105}

suspended sentence of eight years in prison. Defendant was awarded 541 days of credit for time served.

On November 12, 2019, defendant filed a timely notice of appeal.

### III

#### DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

IV  
DISPOSITION

The judgment is affirmed.

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CODRINGTON  
J.

We concur:

MILLER  
Acting P. J.

FIELDS  
J.